

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0148

Sales and Use Tax

Calendar Years 1995, 1996, and 1997

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ISSUES

I. Selling at Retail – Best Information Available

Authority: 45 IAC 2.2-6-8, IC 6-8.1-5-1

Taxpayer protests the tax.

II. Tax Administration - Penalty

Authority: IC 6-8.1-10-1

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The Taxpayer is a sole proprietorship operating a combined tavern and package liquor store. The tavern has a kitchen and serves meals, has pool tables and games, and also has a stage used for strip dancing.

At audit it was determined that the Taxpayer's sales reported for sales tax purposes did not reconcile to sales as reported on its Federal Schedule C for 1995. Adjustments for door cover charges, lottery sales, and items that included sales tax were made.

At audit the Taxpayer informed the auditor that it would protest this issue and file amended federal income tax returns. No federal return has been filed to the Department's knowledge. This alone would not resolve the discrepancy as the 1995 cost of goods sold remains near the amount of sales reported which would leave little margin on the cost of goods sold. It is noted that the margin on cost of goods sold was much larger in 1996 and 1997 on lower sales volume.

Audit also determined that the taxpayer made numerous payments by check to credit card companies for which there was no evidence to disclose the nature of the purchases. Auditor states that the Taxpayer states these were cash draws to operate the business but was unable to provide requested support. Taxpayer provided statements from the credit card company but the detail showed no tax paid. Taxpayer did not retain the original charge slips that would have shown all charges.

After discussion with the Taxpayer on April 24, 2003, he was informed the Letter of Findings would be written based upon his protest letter dated March 9, 1999, and the discussion on April 24, 2003.

I. Selling at Retail – Best Information Available

DISCUSSION

Taxpayer simply maintains that the assessment is too high and has provided no documentation to rebut the assessment.

In reviewing the audit report and the file, it is noted that the assessment, with which the Taxpayer disagrees, stems from the difference in its federal reported income versus the ST-103's filed with the Department.

IC 6-8.1-5-4(a) states:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Taxpayer provided nothing to aid in the resolution of the audit.

FINDING

Taxpayer's protest is denied.

II. Tax Administration - Penalty

DISCUSSION

Taxpayer states that it had difficulty with previous records/bookkeeping and this is a first time audit.

Taxpayer's assessment in 1995 amounted to 24.23% of its total sales that were not reported for sales tax purposes. In addition, taxpayer had no use tax accrual system in place as required.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is denied for Issues I and II.

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